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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

DISPATCHED BY

In the Matter of

Amendment of Section 73.622(b),  
Table of Allotments,  
Digital Television Broadcast Stations.  
(Klamath Falls, Oregon)

MM Docket No. 99-296  
RM-9661

## **NOTICE OF PROPOSED RULE MAKING**

**Adopted: September 30, 1999**

**Released: October 4, 1999**

Comment Date: November 26, 1999

Reply Comment Date: December 13, 1999

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by California Oregon Broadcasting, Inc. ("COBI"), licensee of station KOTI-TV, NTSC Channel 2, Klamath Falls, Oregon. COBI requests the substitution of DTV Channel 13 for its assigned DTV Channel 40.

2. In support of its proposal, COBI asserts that KOTI-TV's initial DTV allotment of Channel 40 falls short of adequately replicating the station's existing service area. Its states that the pairing of KOTI-TV's existing NTSC channel with DTV Channel 40 would result in a 46 percent loss in population served. COBI states that the use of Channel 40 would result in the replication of only 54.5 percent of the population served by KOTI-TV, while the use of DTV Channel 13 would improve that figure to 64.5 percent. COBI further states that the substitution of DTV Channel 13 for Channel 40 in KOTI-TV's pairing would satisfy the Commission's principal community coverage criteria and would have no impact on Channel 12 and 13 NTSC operations or on ATV interference estimates.

3. We believe petitioner's proposal warrants consideration since the allotment of DTV Channel 13 could enable station KOTI-TV to replicate a larger part of its service area. DTV Channel 13 can be substituted for DTV Channel 40 in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 42-05-48 N. and 121-37-57 W. In addition, we find that COBI's channel change is acceptable under the 2 percent criterion for de minimis impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2). We propose to substitute DTV Channel 13 for DTV Channel 40 for station KOTI-TV at Klamath Falls with the following specifications:

| State & City     | DTV Channel | DTV power (kW) | Antenna HAAT (m) |
|------------------|-------------|----------------|------------------|
| OR Klamath Falls | 13          | 45.3           | 671              |

4. Accordingly, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, for the community listed below, to read as follows:

| <u>City</u>           | <u>Channel No.</u> |                 |
|-----------------------|--------------------|-----------------|
|                       | <u>Present</u>     | <u>Proposed</u> |
| Klamath Falls, Oregon | 29, *33, 40        | 13, 29, *33     |

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before November 26, 1999, and reply comments on or before December 13, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Marnie K. Sarver  
Kathleen A. Kirby  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006  
(Counsel for California Oregon Broadcasting, Inc.)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) and 73.622(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

8. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from

the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

## FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Services Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the

Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.